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7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8
9 **IN AND FOR THE COUNTY OF MOHAVE**

12 **STATE OF ARIZONA,**

13 Plaintiff,

15 vs.

17 **JUSTIN JAMES RECTOR,**

18 DEFENDANT.

Case No. CR 2014-01193

**DEFENDANT'S MOTION FOR
PRESERVATION OF ALL EVIDENCE/
and**

**DEFENDANT'S MOTION TO ORDER
STATE TO PROVIDE NOTICE TO
DEFENSE BEFORE DISPOSAL OF ANY
EVIDENCE IN CASE**

(ASSIGNED TO THE HON. LEE JANTZEN)

24 **DEFENDANT Justin James Rector , by and through undersigned**
25 **counsel, hereby moves this Court for a protective order for the State to preserve all**
26 **physical evidence in this matter, to make it available to the defense for inspection and**
27

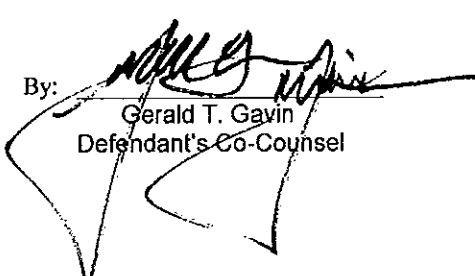


SS0150 CR201401193

1 testing, and provide notice to the defense via filed Court notice before disposing of any
2 evidence, for the reasons provided in the Memorandum attached hereto and
3 incorporated herein.

4 Respectfully submitted this 9th day of March, 2015

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6 By:

7 
8 Gerald T. Gavin
9 Defendant's Co-Counsel

10 
11 Ron Gilleo
12 Defendant's Co-Counsel

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15 **MEMORANDUM**

16 The State is attempting to deprive Mr. Rector of his life; it is essential to his legal and
17 biological, biological survival that all evidence be preserved for inspection and testing
18 for the defense.

19 The 6th, 8th and 14th Amendments to the United States Constitution, and Article II,
20 §§ 1,4,9,10,11,13,22,24,30,32 and 33, along with general principles of equal protection,
21 due process and fundamental fairness, insure that Mr. Rector be afforded access to all
22 evidence, that he be allowed to inspect it, test it, challenge damning evidence and utilize
23 mitigating evidence. This cannot be done if evidence is not preserved, but instead
24 destroyed and not available for trial.

25 The police have a duty to seize obviously material evidence that is reasonably
26

1 within their grasp. State v. Perez, 141 Ariz. 1214, 687 P.2d 1214 (1984). Even though
2 loss of such tantamount to prosecutorial suppression of evidence. State v. Beaty, 158
3 Ariz. 232, 762 P.2d 519, 528 (1988).

4 Mr. Rector, since he is facing the death penalty, believes requiring the State to
5 preserve evidence that is 1) obvious, 2) material, and 3) reasonably within its grasp is
6 an issue of fundamental fairness.

8 This rule is necessary to assure that the police are
9 neither intentionally selective or elusive, nor careless,
10 negligent, or lazy in seizing and assuring the preservation
11 of material evidence. State v. Perez, 141 Ariz. 1214, 687
P.2d 1214, 1219 (1984).

12 In State v. Hannah, 120 Ariz. 1, 583 P.2d 888 (1978), the Supreme Court of
13 Arizona

14 Affirmed a finding of prejudice. The defendant in the case was charged with Arson.
15 The

16 Tucson Police Department seized various items from the scene of the fire;
17 however, these items were later destroyed inadvertently. These items had never
18 been fingerprinted, but the Court nevertheless found "serious prejudice" from the
19 Defendant's inability to determine if exculpatory potential existed:
20

21 Because tests were not made which could have been made,
22 and because it cannot now be determined whether exculpatory
23 evidence would have been developed, we think the trial Court
24 could conclude that Farhang had been denied due process by
25 the negligent destruction of the seized evidence. 583 P.2d
at 889.

26 Furthermore, unless the Court can unequivocally find beyond a reasonable doubt
27 that destroyed evidence could not have proved exculpatory, dismissal is warranted:
28

1 Dismissal is the appropriate remedy unless the evidence
2 is so strong that a Court can say, beyond a reasonable
3 doubt, that the evidence would not have proved
4 exonerative....(H)ere we cannot say that the evidence
5 against Escalante was so strong that the evidence was
6 harmless beyond a reasonable doubt. State v. Escalante,
7 734 P.2d. 597, 603.

8 In State v. Riveria, 152 Ariz. 507, 733 P. 2d 1090 (1987), the Supreme Court
9 of Arizona clearly defines the appropriate remedies for the State's failure to preserve
10 evidence

11 Under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1184 (1963):

12 The action necessary to cure the State's violation of the
13 Defendant's right depends upon the prejudice cause to
14 the Defendant. In cases were the State has suppressed
15 evidence and the evidence is still available, the Defendant's
16 Due Process is protected by granting him a new trial. In
17 instances where the evidence is no longer available
18 because the State has destroyed the evidence or failed in
19 its duty to preserve the evidence the Defendant's due
20 process may nevertheless be protected by the Court
21 giving it to a jury. *However, if the State has destroyed
22 evidence and the prejudice to the Defendant is great or
23 the State acted in bad faith or with connivance, the
24 charges against the Defendant must be dropped or his
25 conviction reversed. A Willits instruction is insufficient
26 to cure the violation of the Defendant's due process.*
27 Riveriera, 152 Ariz. 507, 733 P.2d. 1090 (1987)
28 (emphasis added).

21 Mr. Rector hereby puts the State on notice that any destruction of evidence,
22 especially after the filing of this motion, should be viewed as highly suspect and
23 indicative of bad faith. In State v. Lopez, 156 Ariz. 573, 754 P.2d 300 (App. 1987), the
24 Court of Appeals upheld a dismissal of the charges upon a finding that the State had
25 acted in bad faith in failing to preserve tape recordings of the radio traffic of the offense
26 after defense counsel requested they be preserved. After finding bad faith on the part
27
28

1 of the State, Judge Ferndandez noted:

2 When there is a "reasonable possibility" that the
3 Requested evidence would be favorable and
4 Material to the defense, dismissal is the proper
5 Sanction for the destruction of the evidence. *Id.*

6 Dismissal is required by Brady and Riveria for failure to preserve evidence
7 favorable to the defendant caused by the neglect of the police department. Defendant's
8 due process rights to a fair trial are violated when the State either suppresses or
9 destroys evidence favorable to him and he is prejudiced thereby. Brady v. Maryland,
10 Supra.

11 To avoid all possible problems, Mr. Rector simply requests the State protect and
12 preserve *all* evidence, and file a formal notice with the Court and Defense, that the State
13 plans any evidence is to be eliminated, destroyed, released, or consumed by testing.
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1 Original filed this 9th day
2 of March, 2015, with

3 Clerk of the Court
4 401 E Spring Street
5 Kingman Arizona 86401

6 and copies
7 hand-delivered this date to:

8 Hon. Lee Jantzen
9 Judge of the Superior Court
10 Mohave County Superior Cour
11 401 E Spring Street
12 Kingman Arizona 86401

13
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24 Client Justin James Rector
25 Mohave County Jail

26
27 File

28 By:  _____